

Timothy M. Stubson [#6-3144]  
Crowley Fleck PLLP  
152 North Durbin, Suite 220  
Casper, WY 82601  
(307) 265-2279

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
2012 OCT 26 PM 2 34  
STEPHAN HARRIS, CLERK  
CASPER

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

NEPCO FUND II LLC,

Plaintiff,

vs.

MICHAEL V. DeFELICE, and  
BABETTE DeFELICE

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. **12 cv 246-F**

---

---

**COMPLAINT**

---

---

Plaintiff, NEPCO Fund II LLC, by and through its counsel, Timothy M. Stubson of Crowley Fleck, PLLP, hereby submits its complaint against Defendants, Michael V. DeFelice and Babette DeFelice, as follows:

**JURISDICTION**

1. NEPCO Fund II LLC (hereinafter "NEPCO") is a Limited Liability company formed in the State of Massachusetts and has its principle place of business in the State of Massachusetts.
2. NEPCO is authorized to do business in the State of Wyoming.
3. Defendants Michael V. DeFelice and Babette DeFelice are a married couple with their principal place of residence in the State of Connecticut.
4. The parties are of diverse citizenship.

Receipt # cas 988  
Summons: 2 issued  
not issued

5. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
6. Jurisdiction is proper pursuant in this court pursuant to 28 U.S.C. § 1332(a).

#### **VENUE**

7. This action arises out of a promissory note which was secured by property in Jackson, Teton County, Wyoming.
8. The claims forming the basis of this complaint, or a significant portion thereof, arose in that geographical area which is contained within the federal judicial district known as the District of Wyoming.
9. Venue is properly in this Court pursuant to 28 U.S.C. § 1391.
10. On March 11, 2005, Michael V. DeFelice and Babette DeFelice jointly executed a promissory note in which they agree to repay, in one principal payment plus interest, a \$630,000 loan by April 1, 2010. A copy of the promissory note is attached as Exhibit A.
11. In conjunction with the execution of this note, Michael DeFelice executed a mortgage against property in Jackson, Teton County, Wyoming to secure the repayment of the note. A copy of the mortgage is attached as Exhibit B.
12. On March 11, 2005, United States Trust Company of New York endorsed the note and transferred it to UST Mortgage Company. *See* Exhibit A. On the same day, United States Trust Company of New York also assigned its mortgage in the Jackson property to UST Mortgage Company. *See* Exhibits C.
13. On May 23, 2011, Bank of America, N.A. (as successor by merger to UST Mortgage Company) entered into a forbearance agreement with Michael and Babette DeFelice. Michael and Babette DeFelice agreed that the promissory note matured on April 1, 2010. Bank of America agreed not to foreclose the mortgage until October 31, 2011. A copy of the forbearance agreement is attached as Exhibit D.

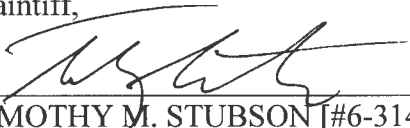
14. On November 8, 2011, Bank of America endorsed the note and transferred it to NEPCO. *See* Exhibit A. On the same day, Bank of America also assigned its mortgage in the Jackson property for value to NEPCO. *See* Exhibit E.
15. Pursuant to the power of sale contained in the mortgage and after proper notice, a foreclosure sale was held on October 16, 2012 in which the Jackson property was sold for \$400,000. Applying this sale price to the amount owing on the note resulted in a deficiency.
16. The promissory note is in default and the principal balance is immediately due and payable, together with unpaid accrued interest.
17. As of October 16, 2012, the principal balance was \$624,030.57 and accrued interest is \$38,155.32. After deducting the proceeds from the sheriff's sale, the total due is \$262,185.89. Interest continues to accrue at the rate of \$47.70 per day.
18. Pursuant to the terms of the loan documents, NEPCO is entitled to recover its attorneys' fees and costs of collection from the Defendants.
19. Michael V. DeFelice and Babette DeFelice are jointly and severally liable to NEPCO FUND II LLC for the full amount of the indebtedness due, including principal, accrued interest, attorneys' fees, cost of collection and other amounts provided for in the loan documents described above.

WHEREFORE, having set forth its complaint against Defendants, Plaintiff prays for judgment as follows:

- A. For judgment against Michael V. DeFelice and Babette DeFelice, jointly and severally, for the principal loan balance, accrued interest, attorneys' fees, costs of collection and other amounts recoverable by the Plaintiff under the loan documents.

DATED this 26th day of October, 2012.

NEPCO FUND II LLC,  
Plaintiff,

  
\_\_\_\_\_  
TIMOTHY M. STUBSON [#6-3144]  
Crowley Fleck PLLP  
152 North Durbin, Suite 220  
Casper, WY 82601  
(307) 265-2279  
Attorneys for Plaintiff